

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL
WITH PROOF
OF SERVICE

76-7081

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

CURTIS L. WARD,

Plaintiff-Appellant,

-against-

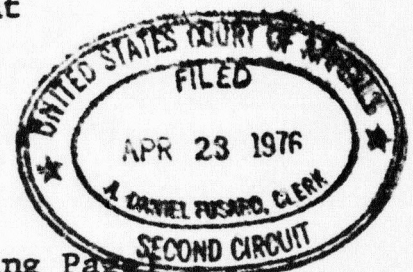
THE CITY OF NEW YORK, CONSOLIDATED EDISON OF NEW YORK,
INC., JAMES MARTIN, JOCAR CAB CORP., COSTELLO CONSTRUCTION
COMPANY, INC. and INTERBORO SURFACE COMPANY,

Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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(Appearances Continued on the Following Page)

(5414)

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INDEX TO APPENDIX

	<u>Page</u>
Relevant Docket Entries	A-1
Complaint	A-3
Stipulation	A-10
Amended Complaint	A-12
Excerpts from Trial Transcript	A-22
Judgment Appealed From	A-66
Notice of Appeal	A-67

TESTIMONY

Plaintiff's Witnesses

Ward, Curtis, L.:	
Direct	A-22
	A-56
Cross	A-60
Liebman, Irving:	
Direct	A-42
Cross	A-52
Redirect	A-53

EXHIBITS

Plaintiff's Exhibits

19 - Emergency Room Report, X-ray Report and Consent for Treatment of the French and Polyclinic Medical School and Health Center	A-62
20 - French and Polyclinic Medical School and Health Center bill	A-65

MOTIONS

Motion to Set Verdict Aside	A-61
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RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 76-7081

CURTIS L. WARD
Plaintiff-Appellant

-against-

THE CITY OF NEW YORK, CONSOLIDATED
EDISON OF NEW YORK, INC., JAMES
MARTIN, JOCAR CAB CORP., COSTELLO
CONSTRUCTION COMPANY, INC. and
INTERBORO SURFACE COMPANY,
Defendants-Appellees

Relevant Docket Entries

Date	Proceedings
1974	
Oct. 2	Filed complaint and issued summons.
Dec. 5	Filed summons & ret-Served City of New York 10-7-74, James Martin 11-22-74, Con-Ed of N.Y. 10-11-74, Jocar Cab Corp. 10-16-74
Dec. 30	Filed Stip and Order that pltff's Complaint shall be amended to include items as indicated-MacMahon J.
1975	
Apr. 29	Filed notice by def. & 3rd party pltff. of service of 3rd party summons and complaint on 3rd party def. Costello Construction.
Apr. 30	Filed notice of second 3rd party summons and complaint of Con-Ed which was served on second 3rd party def. Interboro Surface Co.
May 2	Filed Summons and Marshalls return-served Costello Construction Co. 4-29-75 Filed Summons and Marshalls return-served Interboro Surface Co. 4-30-75

RELEVANT DOCKET ENTRIES

Date	Proceedings
1975	
Aug. 14	Filed amended complaint by pltff.
Dec. 4	July trial begun and continued
Dec. 5	Trial Continued
Dec. 9	Trial Continued
Dec. 11	Trial Continued
Dec. 12	Trial Concluded. Total Trial days-five. Jury verdict for pltff. against Martin, Jocar, Con. Ed. and Costello Construction in the amount of \$750.00.
1976	
Jan. 29	Filed order and judgment #76,096, that pltff. have judgment against defts. James Martin, Con.Ed., Constello Construction and Jocar Cab Corp. in the amount of \$750.00, and that Defts. City of N.Y. and Interboro Surface have judgment against pltff. dismissing the complt.....Clerk approved MACMAHON J. M/N
Feb.23	Filed notice of appeal to the USCA by Pltff. from the final judgment entered 1-29-76. Copies mailed to; Gerberbaum & Garson, Martin and Jocar Cab Corp., 26 Court St. Bklyn., N.Y. 11242 W. Bernard Richland Municipal Bldg., New York, N.Y.10007; Williams & O'Neill, 130 E. 15th Street, New York, N. Y. 10007 and Morris, Duffy, Ivone & Jensen, 233 B'way, New York, N.Y.

COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JUDGE MAC MAHO

74 CIV. 1318

CURTIS L. WARD

VERIFIED

Plaintiff,

COMPLAINT

-against-

THE CITY OF NEW YORK, CONSOLIDATED EDISON
of New York, Inc., JAMES MARTIN and JOCAR
CAB CORP.

Defendants.

-----X
S I R S :

Plaintiff, complaining of the defendants, by LEVY
& PLATT, his attorneys, upon information and belief, alleges
as follows:

1) Jurisdiction is based on diversity of citizenship
and the amount in controversy. Plaintiff is an adult resident
citizen of Winnetka, State of Illinois; the defendant, the CITY
OF NEW YORK is a municipal corporation, incorporated under the
laws of the State of New York and having its principal place of
business in the State of New York; defendant CONSOLIDATED EDISON
of NEW YORK, INC. is a corporation incorporated under the laws
of the State of New York and having its principal place of
business in the State of New York; the defendant JAMES MARTIN
is an adult resident citizen of Far Rockaway, in the State of
New York; the defendant JOCAR CAB CORP. is incorporated under
the laws of the State of New York and has its principal place
of business in the State of New York.

2) The matter in controversy, exclusive of interest
and costs exceeds the sum of ten thousand(10,000) dollars.

3) That on or about May 23, 1974, and within ninety
(90) days after the cause of action accrued, and more than thirty

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FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
JUL 2 1 43 PM '74

A-4
COMPLAINT

(30) days prior to the commencement of this action, plaintiff duly presented, served, and filed a Notice of Intention to Sue on said claim with the corporation counsel of the City of New York, and this action was commenced within one year ninety days after said cause of action accrued herein.

4) That prior to the commencement of this action plaintiff has duly complied with all the conditions precedent to the bringing of this action and has complied with all the provisions of the statute in such cases made and provided, and in particular on or about August 20, 1974, pursuant to notice served by the Comptroller of the City of New York, the plaintiff appeared at the office of the Comptroller of the City of New York and was examined under oath as to his claim.

5) That more than thirty (30) days has elapsed since the demand and claim upon which this action is founded were presented to said Comptroller of the defendant CITY OF NEW YORK for adjustment and more than thirty (30) days has elapsed since the Comptroller's office has examined the plaintiff under oath as above referred to, and the Comptroller and the defendant City of New York has neglected and refused to make adjustment or payment thereof for thirty^{days} after such presentment.

6) At all the times herein mentioned, the defendant, THE CITY OF NEW YORK reserved to itself and exercised control over the public roadways in the borough of Manhattan, County of New York, City and State of New York.

7) That at all the times herein mentioned, the defendant, THE CITY OF NEW YORK exercised control over the roadway located at and on Seventh Avenue between 31st and 32nd Street and more specifically in front of and near 393 Seventh

COMPLAINT

Avenue in the County of New York and City and State of New York.

8) That at all the times herein mentioned the roadway located on Seventh Avenue between 31st and 32nd Street and more particularly in front of and near 393 Seventh Avenue in the County, City and State of New York was and still is a public roadway.

9) That at all the times herein mentioned Seventh Avenue between 31st and 32nd Street, and more particularly in front of and near 393 Seventh Avenue in the County, City and State of New York was and still is a public highway and thoroughfare commonly used by residents of the City of New York and visitors to the City of New York and others.

10) That at all the times herein mentioned the defendant CONSOLIDATED EDISON, of New York, INC. was the owner and exercised control over metal plates which were located in the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York on February 27th, 1974.

11) That at all the times herein mentioned and more particularly on February 27th, 1974 the defendant CONSOLIDATED EDISON, of New York, INC. placed in the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York steel or metal plates.

12) That on or about February 27, 1974 the defendant CONSOLIDATED EDISON, of New York, INC, by its agents, servants and/or employees were working on the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York.

13) That at all the times herein mentioned and more specifically on February 27, 1974 the plaintiff was a passenger in

COMPLAINT

a motor vehicle for hire bearing license plate number 7782TA New York, for the year 1974, owned by the defendant JOCAR CAB CORP., and then and there being driven by the defendant JAMES MARTIN.

14) That at all times mentioned and more specifically February 27, 1974 the defendant JAMES MARTIN was operating a motor vehicle bearing license plate number 7782TA New York, 1974, which was under his operation and control and maintenance with the express and/or implied consent and permission of the defendant owner of said vehicle JOCAR CAB CORP.

15) That at all times herein mentioned the defendant CITY OF NEW YORK, its agents, servants and/or employees gave permission to the defendant CONSOLIDATED EDISON of NEW YORK, INC. to place in the public roadway on Seventh Avenue, between 31st and 32nd Street, in the County, City and State of New York metal and/or steel plates, or other substances of like quality.

16) On February 27, 1974 while the plaintiff was lawfully a passenger in the motor vehicle operated by the defendant JAMES MARTIN and owned by the defendant JOCAR CAB CORP., while said vehicle was being operated along Seventh Avenue same was caused to come to a sudden and violent stop after colliding with the metal and/or steel plates then and there in the said roadway and the plaintiff was caused the injuries hereinafter alleged.

17) That as a result of the aforesaid negligence of the defendants, their agents, servants and/or employees in causing the said collision and sudden and abrupt stop the plaintiff CURTIS L. WARD was caused to be thrown in and about the aforesaid vehicle in which he was a passenger, with great force and violence, causing him to sustain, serious and painful

COMPLAINT

injuries to his head, body and limbs, external and was caused to become sick, sore and disabled and unable to attend to his usual duties and was prevented from attending to his work; and that he was caused to sustain expenses in addition thereto, to be impaired in his earning capacity; and that he was compelled to submit to medical aid and attention in order to be treated for said injuries and he will, in the future be required to submit to additional aid and treatment for the continued treatment of his said injuries, and plaintiff was required to expend sums of money for said injuries, and plaintiff was required to expend sums of money for said medical aid and attention and will in the future, he has been advised, be required to expend additional sums of money for continued treatment of his injuries; and this plaintiff was, is and shall continue to be otherwise damaged.

18) That the aforesaid occurrence and the damages above referred to were caused solely by the negligence and carelessness of the defendant, their agents, servants and/or employees, in operating the motor vehicle aforesaid at a fast, dangerous and reckless rate of speed under the circumstances then and there existing; in failing to have said vehicle under proper, safe, reasonable control; in failing to keep said vehicle under proper, safe, reasonable control; in failing to take the proper steps to avoid the happening of said occurrence; in operating said motor vehicle at the said time and place in a careless, imprudent and negligent manner so as to create a dangerous situation and render a collision practically inevitable; in operating said motor vehicle in a careless, negligent disregard of the plaintiff's person and property; in failing to keep a proper lookout so as to avoid the happening of the occurrence; in failing to keep said vehicle under proper repair; in failing to have seat belts installed in

COMPLAINT

passenger seat of said vehicle so as to make same safer for passengers such as this plaintiff; in allowing, permitting and maintaining a public roadway, the place specified herein, to be, become and remain in an uneven, raised, defective, unsafe, dangerous condition and to be so maintained as to interfere with and prevent the safe passage over and along same by vehicles such as the vehicle in which this plaintiff was lawfully a passenger; in carelessly, negligently and knowingly and/or for a long and/or or unreasonable length of time causing, creating, or permitting and allowing said roadway to be maintained in a manner contrary to the usual, customary, and recognized manner of maintaining roadways in the City of New York; in failing and omitting to see to it that the roadway at the place where this occurrence happened was at all times in a reasonable and suitable condition and in a state of proper repair and free from defects and so maintained as to permit the safe passage over and along the same by vehicles, including the one in which this plaintiff was lawfully thereat; in failing to post warnings, barricades and the like so that vehicles such as the one in which the plaintiff was lawfully a passenger would not collide with the metal or steel plate or like that were then and there placed and located in said highway and local thoroughfare; in permitting, allowing and maintaining the said steel metal plates or like to be placed and remain in a public highway and thoroughfare or permitting same or knowing that same were there for such a long and/or unreasonable length of time; in failing and omitting to make proper and timely inspections of the condition then and there existing on said roadway and to remedy the defects; in failing to give any notice or warning of the dangers or the conditions existing thereat; in so negligently and carelessly conducting itself in and about the

COMPLAINT

Care, maintenance, inspection, supervision, control and custody of said roadway in the respects above set forth and for so long a time so as to constitute the same in its then condition a trap, a menace and a nuisance to the public safety; in causing, allowing and permitting a condition to exist in the roadway thereat that a reasonable and prudent person would know or should know that a vehicle travelling along said highway would strike the plates there located and cause said vehicle to come to a sudden and violent stop and cause injuries and damages to persons within said vehicle; in allowing permitting steel or metal plates to be placed in said roadway in such a manner and way as to create a dangerous condition causing the injuries and damages complained of herein and being otherwise negligent and careless under the circumstances.

19) That said occurrence was occasioned through no negligence or fault on the part of plaintiff in any manner contributing thereto.

20) By reason of the foregoing CURTIS L. WARD has been damaged in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS.

WHEREFORE, plaintiff CURTIS L. WARD demands judgment against the defendants in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS together with the costs and disbursements of this action.

Yours, etc.

LEVY & PLATT
Attorneys for Plaintiff
Office and Post Office Address
380 Lexington Avenue
New York, New York 10017
212 (687-4155)

BY:

JOHN LEVY

STIPULATION

CURTIS L. WARD,,

Plaintiff

DEC 30 1974
-X- D. OF N. Y.
Judge MacMahon
INDEX NO. 74 CIV. 4313

against

STIPULATION

THE CITY OF NEW YORK, CONSOLIDATED
EDISON OF NEW YORK, INC., JAMES MARTIN
and JOCAR CAB CORP.,

Defendants.

-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties, that the Plaintiff's complaint heretofore served shall be amended to include the following as and for Paragraph 20:

20. Solely as a result of the negligence of the Defendants, their agents, servants and/or employees, the Plaintiff was personally injured and suffered serious injuries as defined in Paragraph 4, Section 671 of the Comprehensive Automobile Reparations Act of the State of New York.

That as a result of the said occurrence, the Plaintiff suffered basic economic loss as well as other economic loss and special damages.

That as a result of said occurrence, the Plaintiff has sustained a serious injury as defined in Subdivision 4 of Section 671 of the Insurance Law of the State of New York in that the Plaintiff has sustained permanent injury to his cervical spine including aggravation and exacerbation of a pre-existing arthritic condition which was asymptomatic at the time of the accident and which now causes him great pain and discomfort resulting in a partial loss of function and restriction and the Plaintiff also

5

STIPULATION

other debilitating and disabling injuries to other portions of his body has sustained reasonable and customary charges for medical, hospital and x-ray services necessarily performed which exceed the sum of FIVE HUNDRED (\$500) DOLLARS.

It is further stipulated that Paragraph 20 of the original complaint be deemed amended to read Paragraph 21.

That it is further stipulated that the answers heretofore served shall be amended to include a denial as to the matters included in Paragraph 20²¹ of the amended complaint.

Dated: New York, New York
November 26, 1974

Levy & Platt

LEVY & PLATT
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Gerberbaum, Garson & Goldberg

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New York, New York 10003

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CURTIS L. WARD,

Index No. 74 Civ 4313

Plaintiff,

-against-

AMENDED COMPLAINT

THE CITY OF NEW YORK, CONSOLIDATED EDISON
of NEW YORK, INC., JAMES MARTIN, JOCAR
CAB CORP., COSTELLO CONSTRUCTION COMPANY,
INC. and INTERBORO SURFACE COMPANY, INC.,

Judge MacMahon

Defendants.

Plaintiff, complaining of the defendants, by LEVY &
PLATT, his attorneys, upon information and belief, alleges as
follows:

1) Jurisdiction is based on diversity of citizenship
and the amount in controversy. Plaintiff is an adult resident
citizen of Winnetka, State of Illinois, the defendant, the CITY
OF NEW YORK, is a municipal corporation, incorporated under the
laws of the State of New York and having its principal place of
business in the State of New York; defendant CONSOLIDATED EDISON
of NEW YORK, INC., is a corporation, incorporated under the laws
of the State of New York and having its principal place of
business in the State of New York; the defendant JAMES MARTIN, is
an adult resident citizen of Far Rockaway, in the State of New
York; the defendant JOCAR CAB CORP., is incorporated under the
laws of the State of New York and has its principal place of
business in the State of New York; defendant COSTELLO CONSTRUCTION
COMPANY, INC., is incorporated under the laws of the State of New
York and has its principal place of business in the State of New
York; and defendant INTERBORO SURFACE COMPANY, INC., is incorpor-

AMENDED COMPLAINT

ated under the laws of the State of New York and had its principal place of business in the State of New York.

2) The matter in controversy, exclusive of interest and costs, exceeds the sum of ten thousand (\$10,000.00) dollars.

3) That on or about May 23, 1974, and within ninety (90) days after the cause of action accrued, and more than thirty (30) days prior to the commencement of this action, plaintiff duly presented, served and filed a Notice of Intention to Sue on said claim with the corporation counsel of the City of New York and this action was commenced within one year ninety days after said cause of action accrued herein.

4) That prior to the commencement of this action plaintiff has duly complied with all the conditions precedent to the bringing of this action and has complied with all the provisions of the statute in such cases made and provided, and in particular on or about August 20, 1974, pursuant to notice served by the Comptroller of the City of New York, the plaintiff appeared at the office of the Comptroller of the City of New York and was examined under oath as to his claim.

5) That more than thirty (30) days have elapsed since the demand and claim upon which this action is found were presented to said Comptroller of the defendant CITY OF NEW YORK, for adjustment and more than thirty (30) days have elapsed since the Comptroller's office has examined the plaintiff under oath as above referred to, and the Comptroller and the defendant CITY OF

AMENDED COMPLAINT

NEW YORK has neglected and refused to make adjustment or payment thereof for thirty (30) days after such presentment.

6) At all the times herein mentioned, the defendant, THE CITY OF NEW YORK, reserved to itself and exercised control over the public roadways in the Borough of Manhattan, County of New York, City and State of New York.

7) That at all the times herein mentioned, the defendant, THE CITY OF NEW YORK, exercised control over the roadway, located at and on Seventh Avenue, between 31st and 32nd Street and more specifically in front of and near 393 Seventh Avenue, in the County of New York and City and State of New York.

8) That at all the times herein mentioned, the roadway located on Seventh Avenue, between 31st and 32nd Street and more particularly in front of and near 393 Seventh Avenue, in the County, City and State of New York, was and still is a public roadway.

9) That at all the times herein mentioned, Seventh Avenue, between 31st and 32nd Street, and more particularly, in front of and near 393 Seventh Avenue, in the County, City and State of New York, was and still is a public highway and thoroughfare, commonly used by residents of the City of New York and visitors to the City of New York and others.

10) That at all the times herein mentioned, the defendant CONSOLIDATED EDISON, of NEW YORK, INC., was the owner and exercised control over metal plates, which were located in the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York, on February 27, 1974.

AMENDED COMPLAINT

11) That at all the times herein mentioned and more particularly on February 27, 1974, the defendant CONSOLIDATED EDISON of NEW YORK, INC., placed in the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York steel or metal plates.

12) That on or about February 27, 1974 the defendant, CONSOLIDATED EDISON of NEW YORK, INC., by its agents, servants and/or employees were working on the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York.

13) That at all the times herein mentioned the defendant, COSTELLO CONSTRUCTION COMPANY, INC., was the owner and exercised control over metal plates which were located in the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York on February 27, 1974.

14) That at all the times herein mentioned and more particularly on February 27, 1974, the defendant COSTELLO CONSTRUCTION COMPANY, INC., placed in the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York steel or metal plates.

15) That on or about February 27, 1974 the defendant COSTELLO CONSTRUCTION COMPANY, INC., by its agents, servants and/or employees were working on the roadway on Seventh Avenue, between 31st and 32nd Street, in the County, City and State of New York.

AMENDED COMPLAINT

16) That at all the times herein mentioned, the defendant, INTERBORO SURFACE COMPANY, INC., was the owner and exercised control over metal plates which were located in the roadway on Seventh Avenue between 31st and 32nd Street, in the County, City and State of New York on February 27, 1974.

17) That at all the times herein mentioned and more particularly on February 27, 1974, the defendant INTERBORO SURFACE COMPANY, INC., placed in the roadway on Seventh Avenue, between 31st and 32nd Street, in the County, City and State of New York, steel or metal plates.

18) That on or about February 27, 1974 the defendant INTERBORO SURFACE COMPANY, INC., by its agents, servants and/or employees were working on the roadway on Seventh Avenue, between 31st and 32nd Street, in the County, City and State of New York.

19) That at all the times herein mentioned and more specifically on February 27, 1974, the plaintiff was a passenger in a motor vehicle for hire, bearing license plate number 7782TA, New York, for the year 1974, owned by the defendant JOCAR CAB CORP., and then and there being driven by the defendant JAMES MARTIN.

20) That at all times mentioned and more specifically February 27, 1974 the defendant JAMES MARTIN was operating a motor vehicle bearing license plate number 7782TA New York, 1974, which was under his operation and control and maintenance, with the express and/or implied consent and permission of the defendant owner of said vehicle JOCAR CAB CORP.

AMENDED COMPLAINT

21) That at all times herein mentioned the defendant CITY OF NEW YORK, its agents, servants and/or employees gave permission to the defendant CONSOLIDATED EDISON of NEW YORK, INC., to place in the public roadway on Seventh Avenue, between 31st and 32nd Street, in the County, City and State of New York, metal and/or steel plates, or other substances of like quality.

22) That at all times herein mentioned the defendant CONSOLIDATED EDISON of NEW YORK, INC., its agents, servants, and/or employees, gave permission to the defendants COSTELLO CONSTRUCTION COMPANY, INC. and INTERBORO SURFACE COMPANY, INC., to place in the public roadway on Seventh Avenue, between 31st and 32nd Streets, in the County, City and State of New York metal and/or steel plates, or other substances of like quality.

23) On February 27, 1974 while the plaintiff was lawfully a passenger in the motor vehicle operated by the defendant JAMES MARTIN, and owned by the defendant JOCAR CAB CORP., while said vehicle was being operated along Seventh Avenue, same was caused to come to a sudden and violent stop after colliding with the metal and/or steel plates then and there in the said roadway and the plaintiff was caused the injuries hereinafter alleged.

24) That as a result of the aforesaid negligence of the defendants, their agents, servants and/or employees in causing the said collision and sudden and abrupt stop, the plaintiff CURTIS L. WARD, was caused to be thrown in and about the aforesaid vehicle in which he was a passenger, with great force

AMENDED COMPLAINT

and violence, causing him to sustain, serious and painful injuries to his head, body and limbs, both internal and external and was caused to become sick, sore and disabled and unable to attend to his usual duties and was prevented from attending to his work; and that he was caused to sustain expenses in addition thereto, to be impaired in his earning capacity; and that he was compelled to submit to medical aid and attention, in order to be treated for said injuries and he will, in the future, be required to submit to additional aid and treatment for the continued treatment of his said injuries, and plaintiff was required to expend sums of money for said injuries and plaintiff was required to expend sums of money for said medical aid and attention and will in the future, he has been advised, be required to expend additional sums of money for continued treatment of his injuries; and this plaintiff was, is and shall continue to be otherwise damaged.

25) That the aforesaid occurrence and the damages above referred to were caused solely by the negligence and carelessness of the defendant, their agents, servants and/or employees, in operating the motor vehicle aforesaid at a fast, dangerous and reckless rate of speed under the circumstances then and there existing; in failing to have said vehicle under proper, safe, reasonable control; in failing to keep said vehicle under proper, safe, reasonable control; in failing to take the proper steps to avoid the happening of said occurrence; in operating said motor vehicle at the said time and place in a careless, imprudent

AMENDED COMPLAINT

and negligent manner, so as to create a dangerous situation and render a collision practically inevitable; in operating said motor vehicle in a careless, negligent disregard of the plaintiff's person and property; in failing to keep a proper lookout so as to avoid the happening of the occurrence; in failing to keep said vehicle under proper repair; in failing to have seat belts installed in passenger seat of said vehicle, so as to make same safer for passengers such as this plaintiff; in allowing, permitting and maintaining a public roadway, the place specified herein, to be, become and remain in an uneven, raised, defective, unsafe, dangerous condition and to be so maintained as to interfere with and prevent the safe passage over and along same by vehicles such as the vehicle in which this plaintiff was lawfully a passenger; in carelessly, negligently and knowingly and/or for a long and/or unreasonable length of time causing, creating, or permitting and allowing said roadway to be maintained in a manner contrary to the usual, customary, and recognized manner of maintaining roadways in the City of New York; in failing and omitting to see to it that the roadway at the place where this occurrence happened was at all times in a reasonable and suitable condition and in a state of proper repair and free from defects and so maintained as to permit the safe passage over and along the same by vehicles, including the one in which this plaintiff was lawfully thereat; in failing to post warnings, barricades and the like so that vehicles such as the one in which the plaintiff was lawfully a passenger, would not collide with the metal or steel plate or like, that were then and there placed and located

AMENDED COMPLAINT

in said highway and local thoroughfare; in permitting, allowing and maintaining the said steel or metal plates or like, to be placed and remain in a public highway and thoroughfare or permitting same or knowing that same were there for such a long and/or unreasonable length of time; in failing and omitting to make proper and timely inspections of the condition then and there existing on said roadway and to remedy the defects; in failing to give any notice or warning of the dangers or the conditions existing thereat; in so negligently and carelessly conducting itself in and about the care, maintenance, inspection, supervision, control and custody of said roadway in the respects above set forth and for so long a time so as to constitute the same in its then condition a trap, a menace and a nuisance to the public safety; in causing, allowing and permitting a condition to exist in the roadway thereat, that a reasonable and prudent person would know or should know that a vehicle travelling along said highway would strike the plates there located and cause said vehicle to come to a sudden and violent stop and cause injuries and damages to persons within said vehicle; in allowing, and permitting steel or metal plates to be placed in said roadway in such a manner and way, as to create a dangerous condition causing the injuries and damages complained of herein and being otherwise negligent and careless under the circumstances.

26) That said occurrence was occasioned through no negligence or fault on the part of plaintiff in any manner contributing thereto.

27) Solely as a result of the negligence of the defendants, their agents, servants and/or employees, the plaintiff was personally injured and suffered serious injuries as defined

AMENDED COMPLAINT

in Paragraph 4, Section 671 of the Comprehensive Automobile Reparations Act of the State of New York.

That as a result of the said occurrence, the plaintiff suffered basic economic loss as well as other economic loss and special damages.

That as a result of said occurrence, the plaintiff has sustained a serious injury as defined in Subdivision 4 of Section 671 of the Insurance Law of the State of New York, in that the plaintiff has sustained permanent injury to his cervical spine, including aggravation and exacerbation of a pre-existing arthritic condition which was asymptomatic at the time of the accident and which now causes him great pain and discomfort resulting in a partial loss of function and restriction and the plaintiff also suffered a fracture of the left zygomatic bone and has suffered other debilitating injuries to other portions of his body, has sustained reasonable and customary charges for medical, hospital and x-ray services necessarily performed which exceed the sum of FIVE HUNDRED (\$500.00) DOLLARS.

28) By reason of the foregoing, CURTIS L. WARD, has been damaged in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS.

WHEREFORE, plaintiff CURTIS L. WARD, demands judgment against the defendants, in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS, together with the costs and disbursements of this action.

LEVY & PLATT
Attorneys for Plaintiff
Office and Post Office Address
380 Lexington Avenue
New York, New York 10017

By: 

Ronald S. Platt

* * *

1 [4] mdsr

Ward - direct

* * *

24 Q Would you tell us what happened in the cab as
25 you passed the Statler Hilton Hotel until the time when

1 [5] mdsr

2 the cab stopped. Would you tell us in your own words what
3 happened?

4 A Really, that -- the driver was, I believe, was
5 in the third lane, as I remember, right to the left of the
6 center lane, the white line, and he started moving over
7 after he got by the parked cabs that were in front of the
8 Hilton in the parking line, in front of the Statler Hilton.
9 And then at an angle he moved in, he headed to the curb in
10 front of 393 Seventh Avenue.

11 Q About how fast was he proceeding at that time?

12 A Approximately 25 to 30 miles an hour.

13 Q And then what happened?

14 A And the next thing that happened we had an
15 abrupt stop, and I was thrown from the rear back seat on
16 the right side up against the center divider, and in that
17 divider there is an opening where you pay the cab driver,
18 and that was open, and my forehead went through the center

Ward - direct

19 part of that and my nose and my mouth and my chin and my
20 cheek hit the lower part on the left side of that opening
21 and the top of my head hit the top part of the square.

* * *

1 [7] mdsr

2 if anything, was bothering you?

3 A You mean after I hit?

4 Q Yes.

5 A Well, at the initial impact it threw me back to
6 the edge of the seat and partially on the floor. And I
7 was really stunned for I would have to say five to ten
8 seconds, and the only thing I could feel was the blood
9 coming out of my mouth and nose and going all over my
10 clothes and my hands, and the cab driver looked in the
11 window, and I remember saying, "God, get me to a doctor."
12 And he came around to the right side of the cab, the
13 rear door, and he had me out and walked me around to the
14 left side of the door, and we were still in the parking
15 lane, it was not on the sidewalk curb.

16 Q When you got out of the cab would you tell us
17 what parts of your body, if any, were hurting you?

18 A My head was hurting and my nose and my face in
19 total. I just felt totally groggy and stunned.

* * *

1 [9]mdsr

Ward - direct

* * *

13 Q Where was the blood coming from?

14 A The blood was coming from my nose and from my
15 mouth and from the back of my head.

16 Q Will you show us generally the areas where
17 the blood was coming from?

18 A Well, the cut was all into this part here, and
19 from the inside of my mouth, and from the outside of the
20 nose, and also from the top of my head, the back of my
21 head.

* * *

1 [12]mdsr

* * *

11 Q How long did you remain on the sixth floor of
12 the Montgomery Ward building before you came down and went
13 into the cab to go to French Polyclinic Hospital?

14 A Not more than fifteen seconds.

* * *

24 Q Now, do you recall about what time or how long
25 after the accident happened that you got to the hospital?

1 [13]mdsr

2 A Approximately 7:25 to 7:30.

* * *

1 [16] mdsr

Ward - direct

* * *

20 Q Yes, sir. When you got into the emergency room,
21 please tell us exactly what was done to you without telling
22 us what was said to you.

23 A The doctor took five or six sutures under my
24 lip --

25 Q Would you show us which part of your lip?

1 [17] mdsr

2 A This part right here, and over here, and he cut
3 off scabs in this area here and on the top of my head.
4 And then he sent me to the x-ray room, and they took ten to
5 twelve x-rays of my head, my nose, and my neck. With
6 that they brought me back down. Another doctor had come
7 on duty and he gave me an antibiotic injection
8 and insisted that I lay down and put me in an enclosed
9 kind of area.

* * *

16 Q And how did you feel at that time, Mr. Ward?

17 A Very groggy and weak and in a stunned condition.

18 Q What, if anything, was hurting you at that time?

19 A I really felt I was hurting all over.

20 Q Anything in particular?

21 A Well, especially the head, the neck, and my nose
22 and my mouth.

* * *

1

[22]mdsr

Ward , direct

* * *

6

Q Mr. Ward, was anything applied to your body

7

by anyone in the hospital --

* * *

11

A Yes.

12

Q What?

13

A Bandages.

14

Q Where were they applied?

15

A Across my nose, and my mouth, lip, and the top

16

of my head.

* * *

22

Q When you took the plane back to Chicago that day,

23

while on the plane how did you feel physically?

24

A Horrible. Bad.

25

Q What in particular, if anything, was bothering you?

1

[23]mdsr

2

A Headaches and I was groggy.

3

Q Anything else?

4

A Lots of pain.

5

Q Sir?

6

A More pain in my neck and my head and my whole

7

face.

* * *

Ward - direct

11 Q When you got back home that same evening, where
12 was it, Winnetka, Illinois?

13 A Yes.

14 Q How did you get from the airport to your home?

15 A I had a limousine pick me up to take me to my
16 home and from there directly to the Evanston Hospital.

17 Q And you went to the Evanston Hospital on what
18 day, sir?

19 A The same day.

20 Q And what did they do for you at the Evanston
21 Hospital?

* * *

1 [24]mdsr

* * *

14 A Dr. McKeever , our internist and cardiologist
15 checked my entire body for reflexes and the nasal aera
16 with different instruments to check any neurological things
17 that he might recognize.

18 Q Did he take the bandages off from your face at
19 that time?

20 A Yes, he did. And he called in Dr. Soper ,
21 who specializes only in surgery --

* * *

[25] mdsr

Ward - direct

1

2

Q He looked at the sutures on your lip?

3

A Yes.

4

Q What else did Dr. Soper do?

5

And And looked under the lip area, and in the mouth

6

area.

7

Q How did your lip and your mouth area feel, and

8

particularly where you were sutured? How did that feel?

9

A Well, it was very sore and painful, and it was

10

out about the length of my nose.

11

Q In other words, it was swollen?

12

A Swollen up.

13

Q What else did Dr. Soper do for you, if any-

14

thing, in the Evanston Hospital when you returned to

15

Chicago that day?

16

A That was all he did, just checked the sutures.

17

Q And Dr. McKeever, what, if anything, did he do

18

on that particular day?

19

A He checked blood pressure, heart, and normal

20

reflexes.

21

Q And about how long did this examination take at

22

the Evanston Hospital?

23

A Approximately one hour.

* * *

1

[26] mdsr

Ward - direct

* * *

7

Q Now, did either one of the doctors give you,
8 prescribe any medication to you?

9

A Yes. Dr. took me off of the anti-
10 biotic they gave me in New York and put me on another one.

* * *

17

Q Did they give you any medication, Mr. Ward?

18

A Yes.

19

Q Did they give you liquid, pill, or in what
20 form?

21

A He put me on Equitron and on antiobiotic
22 capsules.

23

Q Those were pills?

24

A Yes.

25

Q Two kinds of pills?

1

[27] mdsr

* * *

7

Q Did you pay the pharmacist?

8

A Yes.

9

Q How much did you pay for those pills?

10

A \$22.85.

Ward - direct

11 Q Did you pay Doctors McKeever and Soper?
12 Were they paid for those visits?

13 A They were paid for all the visits.

14 Q How much was his visit, do you know, at the
15 Evanston Hospital?

16 A There is a big list. I have a grand total of all
17 the bills.

* * *

25 A Dr. McKeever , \$104.50, and \$75, and those are

1 [28] mdsr

2 his two bills.

3 Q And Dr. Soper?

4 A Dr. Soper, was \$14.

5 Q How much were the medications that these doctors
6 prescribed for you?

7 A \$22.85.

8 Q When you left the hospital and went home that
9 evening, how did you feel?

10 A Very weak and in pain.

11 Q Where was the pain?

12 A The pain was in my head and in my neck and in
13 my mouth, and my cheek area.

Ward - direct

14 Q Let me ask you this: Prior to that time had
15 you ever had any pain in your mouth, in that area of your
16 mouth?

17 A No.

18 Q Had you ever had any pain in that cheek before?

19 A No.

20 Q Had you ever had that kind of a headache before?

21 A No.

22 Q And how about your neck, had you ever had any
23 pains in your neck before this accident?

24 A Yes, I have had pain in the right side of my
25 neck and my shoulder area.

1 [29] mdsr

2 Q And when before the accident was the last time
3 that you saw a physician relative to the pain that you
4 described as having in your neck and in your shoulder?

5 A In July of 1973.

6 Q Between July of 1973 and the day of this
7 accident would you tell us whether or not you had suffered
8 any pain in the area of your neck?

9 A No.

10 Q When you got home from the hospital that
11 evening would you show us where in the neck area the pain

Ward - direct

12 was coming from or felt?

13 A It was all up in the back part of my head down
14 into my neck area and into the lower back, into the higher
15 back area.

16

- - -

17

1 m d [30]

2 Q Did you take any of those pills that the
3 doctor prescribed for you that evening?

4 A The way that he prescribed them.

5 Q And did you go to bed?

6 A Yes.

* * *

15 Q The question is: How did you sleep that
16 evening?

17 A I did not sleep too well that night or four
18 other nights.

19 Q How many nights, sir?

20 A Four other nights.

* * *

1 M D [31]

Ward - direct

* * *

3 Q When following the accident were you able to
4 r eturn to Montgomery Ward? Do you recall?

5 A Not until two weeks later.

* * *

1 M D [32]

* * *

4 Q Let's take the next day, February 28th. What
5 did you do on February 28th?

6 A I went to Dr. Davis.

7 Q Where is Dr. Davis located?

8 A In the Evanston Hospital.

9 Q Had you ever seen Dr. Davis before this par-
10 ticular accident?

11 A Yes.

12 Q Tell us when you saw Dr. Davis in the Evanston
13 Hospital what did he do for you?

14 A He gave me a thorough examination, checked the
15 reflexes of my neck, ran me through a series of exer-
16 cises.

17 Q About how long did the examination last?

18 A Approximately 45 minutes.

Ward - direct

19 Q Do you know whether or not Dr. Davis has a
20 medical specialty?

21 A He is an orthopedic surgeon.

* * *

1 M D [33]

* * *

11 Q How long did you say this examination lasted at
12 the Evanston Hospital by Dr. Davis?

13 A Approximately 45 minutes.

14 Q And did you pay -- was he paid for this?

15 A Yes.

16 Q How much was he paid?

17 A \$27.50.

18 Q When you left Dr. Davis' office did he prescribe
19 any medication for you?

20 A Yes. He prescribed a series -- yes, he
21 prescribed medication and treatment.

22 Q What kind of medication? Were they pills or
23 liquid?

24 A These were pills.

25 Q And how many pills -- did you have the

MD [34]

Ward - direct

prescription filled at a pharmacy?

A Yes.

Q And how much was the prescription?

A \$9.23 and \$5.60.

Q About how many pills were there altogether?

A I really cannot tell you that.

Q How many times a day did you take those pills and for how long a period of time?

A Four times a day.

Q And for how long a period of time did you take the pills Dr. Davis prescribed?

A I took them for approximately two months and then I continued as my neck bethered me.

Q And how about the pills that McKesever had given you? How long did you take his pills?

A Just two weeks.

Q When you left Dr. Davis' office, how was your neck feeling?

A Very sore, painful, and I was having very severe headaches.

Q How did your lip feel?

A It felt the same way because it looked the same as it did the day before.

Q How about your nose?

MD [35]

Ward - direct

1
2
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17
18
19
20
21
22
23
24
25

A The ame.

Q And your head; your scalp?

A The same scalp problem.

Q What did you do? Did you go home from
Evanston Hospital after Dr. Davis examined you?

A Yes.

Q What did you do when you got home?

A I was told to remain in bed for four to five
days and --

Q Without telling us what you were told, if you
would, Mr. Ward.

A Sorry.

Q Just tell us what you did.

A Stayed in bed.

Q And the next day what did you do? How did you
sleep that evening, the evening of the 28th?

A The same as I reported for Dr. McKeever's
visit. I did not sleep well for the five days.

Q- And would you describe what discomfort, if any,
you suffered during those five days that you say you couldn't
sleep?

A There was a constant throbbing and pain in my
left neck and my shoulder area and in my head.

Q Would you show us where the area you are

ND [46]

Ward - direct

1
2 referring to is?

3 A Right here around through the neck, and in this
4 area here to the back, and the forehead.

5 Q On March 1, 1974, where did you go, if any-
6 where? Did you stay at home or did you go out?

7 A On March 4th?

8 Q March 1st. That would be the second day after
9 the accident happened.

10 A No, I did not leave my house until March 5th.

11 Q And what did you do while you were in the house
12 for these five days or so?

13 A I stayed in bed, did what the doctor told me
14 to do.

15 Q And did you use any devices that any one of
16 these doctors had given you or prescribed for you?

17 A He prescribed a collar for me which I used, and
18 also an in-home traction device.

* * *

MD [37]

1
2 Q And how much did you pay for it?

3 A \$7.95

* * *

Ward - direct

6 Q With reference to the -- would you call it a
7 pulley?

8 A No, there is an orthopedic device that is an
9 OEC 1777 device that the surgeons recommend, and you hang
10 it on the door, and it has a collar device that has cushion
11 chinguards, and you have to -- and then it has a weight
12 balance that you have to build up your weight to twenty
13 to twenty-eight to thirty pounds on your neck.

14 Q How often during those five days, or to March
15 5, 1974, did you use this pulley device?

16 A I used that every day.

17 Q Once a day, twice a day?

18 A No more than a half an hour, because he put
19 me on hospital physical therapy.

20 Q A half hour at a time?

21 A Yes.

22 Q And how many times a day did you use that
23 device?

24 A Four times a day.

25 Q And would you tell us whether or not there was

MD [38]

1 a ny pain in using that particular device, or whether you
2 experienced any pain.
3

Ward - direct

4 A Yes, there was pain. There is a strain.

5 Q Where did you feel the particular strain?

6 A In the neck area.

7 Q How about the collar up until the time that you
8 left the house, about how often did you wear that collar?

9 A I wore the collar until I left the house 100
10 per cent of the time, including sleeping.

11 Q Would you tell us whether or not with the
12 collar on you still had any pain?

13 A The collar did not change that.

14 Q You still felt the pain; you still took the
15 medication?

* * *

1 MD[39]

* * *

3 Q Would you please tell us the dates you saw
4 him, the amounts that you paid him, and what he did for
5 you?

6 A I saw him on 6-26; \$75.

* * *

Ward - direct

21 Q Now, did you see Dr. Soper again?

22 A On 3-5.

23 Q And what were your complaints with reference to
24 Dr. Soper? What part of your body did you see Dr. Soper
25 about?

1 MD [40]

2 about?

3 A He removed the sutures.

4 Q Tell me, how did he remove the sutures? What
5 did you observe him doing, and what did you feel?

* * *

10 A He just cut them out.

11 Q What did he use?

12 A He clipped them. His instruments; surgical
13 instruments.

* * *

1 MD [42]

* * *

15 Q How did you feel on March 5th-- how did you
16 lip feel where you were sutured and where the sutures were
17 removed?

18 A That was still very sore area for over two and a
19 half weeks.

20 Q And how about your nose? How did that feel?
21 A My nose scab and lacerated lasted almost a
22 month.

* * *

* * *

1

gtjt [3]

Liebman-direct

* * *

3

A I'm a medical doctor, an orthopedic surgeon.

4

Q Which university did you attend?

5

A I graduated from Chicago Medical School.

6

Q And what year was that, Doctor?

7

A In 1957.

8

Q And then did you go on to medical school?

9

A That's after I graduated from medical school,

10

in 1957.

11

Q What undergraduate school did you go to?

12

A Brooklyn College.

13

Q What year did you graduate from Brooklyn

14

College?

15

A 1953.

16

Q Upon graduating from Medical school in 1957,

17

did you spend a term as an intern and a resident?

18

A Yes.

19

MR. BYRNE: Excuse me. I think all the de-

20

fendants would concede that the Doctor can give medical

21

testimony and he is qualified to do so.

* * *

24

THE COURT: I know you would, but I would

25

like you not to. Proceed. He is qualified. They concede

1 gtjt [4] Liebman-direct
2 it. Let's get to it.

* * *

10 Q I wonder if you could refer to the French
11 Polyclinic record, a copy of which you have, Doctor.

12 I wonder if you would be good enough to tell
13 us what the French Polyclinic Hospital record shows with
14 reference to the diagnosis that was made on Mr. Ward when
15 he went there.

16 A The physical findings were multiple abrasions
17 around the nose, a laceration of the upper lip and abra-
18 sion of the scalp.

19 X-rays were taken at the hospital. They re-
20 vealed a fracture through the left zygomatic bone. That
21 is the big cheek bone on the side, on the left side of
22 the face.

23 And X-rays of the neck, the cervical spine
24 revealed osteo-arthritic degeneration as well as multiple
25 discogenic disease affecting the segments between the fifth

1 gtjt [5]
2 and seventh cervical vertebrae.

3 Q Dr. Liebman, what is a fracture?

4 A A fracture means a broken bone.

* * *

Liebman-direct

16 Q And what is osteo-arthritis?

17 A Osteo-arthritis is the normal wear and tear
18 that occurs in bones and joints as a person ages. It is
19 the more common type of arthritis that we see.

20 Q And so this man had an arthritic neck prior
21 to the time when the accident occurred, is that correct,
22 Doctor?

23 A That's correct.

24 Q Doctor, if I told you that the bill of the
25 French Polyclinic Medical School and Medical Center was

1 gtjt [5 A]

2 \$220 for the emergency room treatment, including the
3 X-rays, would you agree that that is a fair and reason-
4 able bill for this type of service in the City of New
5 York in 1974?

6 A Yes, it is.

7 MR. BRASS: I will so concede.

8 Q Doctor, is arthritis a pain producing kind of
9 a disability?

10 A Osteo-arthritis is a disease that can, at
11 times, produce pain and at other times be completely
12 asymptomatic.

13 Q What does asymptomatic mean, Doctor?

Liebman-direct

14 A Completely painless and the patient wouldn't
15 even know they have it.

16 Q Did you see Mr. Ward at my recommendation,
17 Doctor?

18 A Yes. I saw him on one occasion on November
19 21st -- November 11th, 1974.

20 Q And what is the history, by the way, in the
21 hospital record?

22 A The patient was involved in a taxi accident
23 when a taxi hit --

* * *

1 gtjt [6]

* * *

10 What history did you receive from Mr. Ward
11 at the time that you saw him?

12 A He stated that he had been injured after
13 being involved in a taxi accident on 3/27/74 and following--

14 MR. BRASS: 3/27 did you say?

15 THE WITNESS: I'm sorry. 2/27/74, and following
16 the accident he was treated at the French Polyclinic
17 Hospital.

18 Q Did he give you any other history or any
19 X-rays to look at during your examination?

Liebman-direct

20 A Yes. He stated following the accident he
21 went home to Illinois where he was under the care of his
22 own private physicians, Xirays were taken and a course of
23 physiotherapy was prescribed, and at that time he was
24 still receiving physiotherapy treatments to his neck.

2

25 Q Is physiotherapy an indicated method of

1

gtjt [7]

2

treatment of aneck containing an osteo-arthritic neck?

3

A Yes.

4

Q Did he tell you whether or not he was asympto-

5

matic before the time of the accident?

6

A Yes. He told me that he had no pains in his

7

neck prior to the accident.

8

Q And for a period of time prior to the accident?

9

A The history I received -- the history that I

10

received was of no pain in the cervical spine.

11

Q At the time of the accident?

12

A At the time he had the accident.

* * *

1

gtjt [8]

* * *

Liebman-direct

10 Q Doctor, did you examine Mr. Ward?

11 A Yes, I did.

12 Q What did your examination consist of?

13 A I examined the areas of his complaints. He
14 was complaining of pain in the cervical spine, more
15 pronounced on the left, and in addition he stated that
16 he had occasional headaches.

17 Q What was your diagnosis after your examination
18 of the patient?

19 A I diagnosed a fracture of the left zygomatic
20 bone, a laceration of the left upper lip, which would
21 leave him with a permanent cosmetic deformity, as well
22 as a derangement of the cervical spine aggravating a pre-
23 existing asymptomatic osteo-arthritis.

24 Q Doctor, as far as the neck is concerned, did
25 he express to you any symptoms of pain, or discomfort

1 gtjt [9]
2 during that examination?

3 A He complained of pain in his neck.

4 On physical examination I found tenderness
5 to palpation throughout the left trapezius muscle. That
6 is the large muscle that goes from the left side of the
7 neck down toward the shoulder.

8 There was a full range of motion of his neck
9 with pain on full extension, that is, bringing his head
10 backwards and forwards.

11 Q You said palpation. What is that?

12 A Palpation is pressing the area with one's
13 hand to see if there is pain present.

14 Q And is that a usual tool employed by physicians?

15 A Yes.

16 Q Doctor, what is your prognosis with respect
17 to the neck. Will that get any better?

18 A The arthritis in his neck will not --

19 MR. BRASS: I did not hear that, please.

20 A The arthritis in his neck will not abate.
21 It is a degenerative process and it gets worse.

* * *

1 gtjt [10]

* * *

4 Q Doctor, could you state whether or not you
5 have an opinion as to whether this accident caused this
6 asymptomatic condition to become symptomatic?

7 A Yes, I do.

8 Q And what is your opinion, Doctor?

Liebman-direct

9 A It caused an aggravation of the pre-existing
10 osteo-arthritis which was painless.

11 Q Doctor, do you have an opinion with a reason-
12 able degree of medical certainty as to whether the auto-
13 mobile accident of February 27, 1974 was the competent
14 producing cause of the injuries and sequellae as you found
15 them on that date?

16 A Yes.

* * *

20 Q Will you tell us your opinion?

21 A It is my opinion that it is related to the
22 accident.

* * *

24 Q Doctor, is there anything that can be done
25 by way of treatment with regard to the neck when it is in

1 gtjt [11]
2 a state of having syndromes?

3 A This is the type of disease that requires
4 symptomatic treatment; some medicine for pain, usually
5 aspirin, some hot pads, occasionally the use of a
6 collar for the neck. Otherwise, there is very little
7 that can be done.

Liebman-direct

8 Q Is it a painful type of a symptom, Doctor?

9 A Yes.

10 Q And is it a disabling type of a pain?

11 A When the pain is present it is disabling.

12 Q And can that kind of pain, also, Doctor, in
13 your experience, cause headaches?

14 MR. BRASS: I object to these leading questions,
15 Judge.

16 THE COURT: Overruled. It is not a leading
17 question.

18 A The pain per se doesn't cause headaches.
19 What happens is with the pain there is -- with this disease
20 there are episodes of muscle spasm which can occur and
21 that causes tension on the back of the head and the
22 patient usually complains of headaches on the back of
23 the head, occipital type of headaches.

* * *

1 gtjt [13]

* * *

4 Q Doctor, is this type of a condition which
5 becomes symptomatic due to a trauma, is one of the
6 manifestations headaches?

7 A It can be.

Liebman-direct

8 Q When you saw Mr. Ward, it was about nine
9 months or so after the accident, is that correct, Doctor?

10 A Yes.

11 Q And I believe you said you did find something
12 on the tip of his nose, is that right?

13 A There was a laceration on the tip of his lip.

14 Q Was there anything on his nose?

15 A No, I don't have -- I didn't examine his nose.
16 I don't have any notations about his nose.

17 Q Doctor, assuming that at the time of the
18 accident and preceding the accident for several months,
19 Mr. Ward was asymptomatic in the area of his neck and that
20 following the occurrence he began to experience pain in
21 the cervical region and to this date has re-occurent pain,
22 would you state with a reasonable degree of medical cer-
23 tainty whether or not in your opinion that pain was pro-
24 duced by the accident of February 27, 1974?

25 A Yes, it was.

1 gtjt [14]

2 Q Thank you.

3 And, Doctor, what was your fee for your
4 examination of Mr. Ward?

Liebman - direct

5 A \$125.

6 Q And was that fee paid to you?

7 A Yes.

8 Q And was that the fair and reasonable value
9 of the services which you rendered?

10 A Yes.

* * *

14 CROSS EXAMINATION

15 BY MR. MURPHY:

16 Q Doctor, the left zygomatic bone, is that
17 commonly referred to as the cheekbone?

* * *

20 A By laymen, they call it the cheekbone. It
21 is the large bone that goes from your nose back towards
22 your eye. It makes up the cheek.

* * *

1 gtjt [18]

* * *

16 THE COURT: Assuming you have that condition
17 -- incidentally, did this plaintiff have the condition
18 before the accident?

19 THE WITNESS: Obviously it was there before
20 the accident.

21 THE COURT: Would this accident in any way
22 aggravate it or make it worse, in your opinion?

23 THE WITNESS: Well, it did. The patient
24 stated that he did not have pain in his neck prior to
25 the accident and the accident caused this condition to

1 gtjt [19]
2 be symptomatic, and it's a fact that osteo-arthritis,
3 which is asymptomatic which can cause no pain, can be
4 aggravated by an accident.

5 THE COURT: Asymptomatic is not a word the
6 jury goes around with in their pocket. What does it
7 mean?

8 THE WITNESS: It means painless. You have
9 this condition and this is there and it is painless.

10 THE COURT: Then after a blow what happens?

11 THE WITNESS: After an accident, it can become
12 aggravated so you can have pain in that area.

* * *

1 gtjt [25]

* * *

11 Q Doctor, as part of your examination of any
12 patient, do you take into account the history and com-
13 plaint of pain that the patient makes in order to arrive
14 at a diagnosis?

15 A Yes.

16 Q Are complaints an important part of your
17 diagnosis?

18 A Yes.

19 Q Was the patient's complaints consistent with
20 your diagnosis?

21 A Yes.

22 Q And was the examination that you made con-
23 sistent with your diagnosis?

24 A Yes.

25 Q Do you have any reason or did you have any

1 gtjt [26]
2 reason at that time, Doctor, to doubt Mr. Ward's complaints?

3 MR. BRASS: I object to the question, sir.

4 THE COURT: Overruled.

5 A No. I felt that his complaints were
6 genuinely present.

7 Q Doctor, one other thing:

8 The X-rays that you reviewed, they showed a

9 condition, did they not?

10 A Yes, they did.

11 Q And that you could see, could you not?

12 A Yes.

13 Q And that was also consistent with Mr. Ward's
14 complaints and consistent with your diagnosis?

15 A Yes.

* * *

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gtjt [34]

Ward-direct

Q Mr. Ward, for how long a period of time did the pain in the neck continue as you described it as you felt it on March 5th?

A To that degree, through September of that year.

Q And did you see any doctors between March and September with reference to the pain in your neck?

A Yes. Dr. Davis.

Q And how many times did you see him? Was that at the Evanston Hospital?

A Evanston Hospital.

Q How many times did you see him during that period of time?

* * *

22
23
24
25

A I'd say approximately five times.

Q Was that at the Evanston Hospital?

A Evanston Hospital and in his office and at the therapy center.

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gtjt [35]

Q What did you do at the therapy center? Will you describe it for us?

* * *

Ward-direct

THE COURT: Overruled.

8 A Diathermy, traction and deep heat massage.

9 Q Can you describe the traction that they put
10 you through?

11 A They put you on an electric machine that is
12 timed for 20 to 25 times and continues to --

* * *

14 A -- pull your neck up and down.

* * *

1 gtjt [36]

2 Q How much did you pay for this treatment?

* * *

7 A \$186 for the Evanston Hospital and --

8 Q From March to September, the period you
9 described -- I'm sorry, go ahead.

10 A And the Northwest Memorial, \$62.50.

11 Q That is another hospital you went to for this?

12 A Yes. It was close to my office.

* * *

1 gtjt [37]

* * *

20 Q Mr. Ward, subsequent to September, did you
21 continue to have pain in your neck?

22 A Yes.

* * *

1 gtjt [39] Ward-direct

2 Q Do you have any complaints now about any
3 parts of your body that were injured in that accident?

4 A Yes. I continue to have slight pains in
5 that area.

* * *

1 gtjt [40] Ward-direct

* * *

19 Q How long did the pain in the chest persist?

20 A For about six months.

21 Q And what kind of a pain was that?

22 A It was just a general muscle all over pain.

23 It just --

* * *

1 gtjt [41] Ward-direct

* * *

Ward-direct

6 Q Do you have any scars or any abrasions that
7 you can see?

8 A I have scars on top of my -- in the temple of
9 my head.

10 Q What about your nose and --

* * *

16 THE WITNESS: Yes, from the accident. I
17 reported that.

* * *

23 A A slight scar on my nose that still remains.

24 Q And under the lip?

25 A And the lip.

1

gtjt [42]

* * *

9 Q Mr. Ward, other than the bills that you testi-
10 fied to having spent for medical care, are there any
11 others?

12 A Yes, there are other bills.

13 Q Would you please tell us what they are?

14 A Could I give you the grand total?

15 Q Yes. Please do.

16 A \$1,142.



1

gtjt [43]

Ward-cross



4

Q So that the grand total of all the bills,

5

including all of those bills that you have already testi-

6

fied to, come to \$1, 142?

7

A Yes, sir.



A-61
Motion to Set Verdict Aside

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jk[1]

MR. PLATT: May I move to set aside the verdict
as inadequate.

THE COURT: Denied. The injuries were trivial.
We could have settled it. I spoke to you any number of
times, Mr. Platt, to no avail at all.

* * *

PLAINTIFF'S EXHIBIT 19 - EMERGENCY ROOM REPORT, X-RAY
REPORT AND CONSENT FOR TREATMENT OF THE FRENCH AND
POLYCLINIC MEDICAL SCHOOL AND HEALTH CENTER



FRENCH AND POLYCLINIC
MEDICAL SCHOOL AND HEALTH CENTER

The French Hospital Division • (212) LA 4-3060

Pl's #19

October 9, 1975

The United States District Court, for the
Southern District of New York
Poley Square
New York, New York

RE: Curtis L. Ward
Our File # Treated in our E.R. on
February 27, 1974

Your Case # 74 civ 4313

Dear Sirs:

This is to certify that the enclosed record on the above named
patient is a true and complete copy of the original record.

Very truly yours,

Estelle Patricia Borysewicz, ART

Estelle Patricia Borysewicz, ART
Medical Record Librarian
The French Hospital Division

EPB:va

10/9/75 7
Clare Harris

The New York Polyclinic Hospital Division
345 W. 50th Street, New York, N.Y. 10019

The French Hospital Division
330 W. 30th Street, New York, N.Y. 10001

The Postgraduate Medical School
345 W. 50th Street, New York, N.Y. 10019

A-63

PLAINTIFF'S EXHIBIT 19 - EMERGENCY ROOM REPORT, X-RAY
REPORT AND CONSENT FOR TREATMENT OF THE FRENCH AND
POLYCLINIC MEDICAL SCHOOL AND HEALTH CENTER

FRENCH AND POLYCLINIC MEDICAL SCHOOL AND HEALTH CENTER, INC.
☒ FRENCH HOSPITAL DIVISION ☐ N.Y. POLYCLINIC HOSPITAL

EMERGENCY ROOM REPORT

CHARGES

LAST NAME <i>Ward</i>		FIRST NAME <i>Christ</i>		MIDDLE NAME <i>L</i>	DATE <i>2/27/74</i>	TIME <i>7:30</i>	A.M. <input type="checkbox"/>	P.M. <input checked="" type="checkbox"/>	EMERGENCY FEE \$
ADDRESS <i>804 Bael Kray Wenthla</i>		CITY <i>San Juan</i>		STATE <i>P.R.</i>	ZIP <i>00906</i>				AMBULANCE
PHONE	AGE <i>37</i>	SEX <i>M</i>	RACE <i>Y</i>	RELIGION	MARITAL STATUS	DATE OF BIRTH <i>11-17-71</i>		X-RAYS	
IF MINOR, FULL NAME OF PARENT OR GUARDIAN				METHOD OF ARRIVAL: <input type="checkbox"/> CARRIED <input type="checkbox"/> WALK <input type="checkbox"/> AMBULANCE <input type="checkbox"/> OTHER		COMP. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		MEDICATIONS	
ADDRESS				MEDICAID \$		TOTAL \$			
EMPLOYER				DEPT. WELFARE \$		PAID \$			
ADDRESS				MEDICARE \$		BALANCE \$			
CLINIC NO.				PREVIOUS ADMISSION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>					
REFERRED TO <i>Own Doctor</i>				CLINIC ON		A.M. <input type="checkbox"/>			
PLACE OF ACCIDENT: <i>7th Ave 293-</i>				DATE		TIME <i>7:05</i>		A.M. <input type="checkbox"/>	
PATIENT STATEMENT: <i>I have hit a 5" metal plate on ground. I am stuck. I am in pain. I have a laceration on my right side.</i>									
FINDINGS: <i>multiple abrasions on the nose laceration on upper lip laceration on right side of face</i>				<i>No allergy</i>					
TEMP.	PULSE <i>96</i>	RES.	BLOOD PRESSURE <i>120/70</i>						
X-RAY (SPECIFY PART)				NEC.	POB.	X-RAY \$			
<i>Left mandible</i>				<i>Left maxilla</i>	<i>Left mandible</i>	<i>Left maxilla</i>			
LAB.				<i>He has a laceration on the mandible or maxilla on the right side</i>					
TREATMENT:				MEDICATIONS:		TIME ADMIN- ISTERED	GIVEN BY		
<i>Suture</i>									
<i>He had tetanus toxoid 3 months ago.</i>									
<i>Tetanus Antitoxin 5000 U. 1/2 cc</i>									
DIAGNOSIS: <i>Left maxilla & mandible fractures</i>				TETANUS TOXOID: NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>					
RECORDED BY: <i>A. Rios</i>				PHYSICIAN: <i>M. Rios</i>					
DISPOSITION: <input checked="" type="checkbox"/> TREATED & DISCHARGED <input type="checkbox"/> ADMITTED <input type="checkbox"/> REFERRED TO M.D. <input type="checkbox"/> REFUSED TREATMENT <input type="checkbox"/> OTHER HOSPITAL									
POLICEMAN'S NAME				SHIELD #		COMMAND			
NOTIFICATION TIME <input type="checkbox"/> POLICE <input type="checkbox"/> M.D. <input type="checkbox"/> P.M. <input type="checkbox"/> RELATIVE <input type="checkbox"/> M.D. <input type="checkbox"/> P.M. <input type="checkbox"/> MEDICAL EXAMINER <input type="checkbox"/> P.M.									

A-64

PLAINTIFF'S EXHIBIT 19 - EMERGENCY ROOM REPORT, X-RAY
REPORT AND CONSENT FOR TREATMENT OF THE FRENCH AND
POLYCLINIC MEDICAL SCHOOL AND HEALTH CENTER

WARD CURTIS
804 Boal P'kway
Wennitka Ill. 60093

155-

X-RAY REPORT

NO. 2856

☐ AMBULATORY ☐ WHEEL CHAIR ☐ STRETCHER ☐ PORTABLE

☐ IN-PATIENT☒ EMERGENCY ROOM☐ OUT-PATIENT #☐ PRIV. REFERRAL

☐ COMPENSATION #
☐ MEDICAID #
☐ MEDICARE #
☐ BLUE CROSS #

MEDICAID #
MEDICARE #
BLUE CROSS #

G.P.O. & MATERNITY DIVISION PRINT INFORMATION ABOVE:
PATIENT'S NAME, ADDRESS, AGE, CHART, DOCTOR AND LOCATION IN HOSPITAL, PRESS
HARD - USE BALL POINT PEN. ALL OTHERS MUST USE ADDRESSOGRAPH PLATE.

IF COMPENSATION:
PLEASE ANSWER
THE FOLLOWING

EMPLOYER

ADDRESS

INSURANCE CARRIER

EXAMINATION
REQUESTED☐ ROUTINE CHEST X-RAY

DATE REQUESTED:

Film - Nasal bone Film - Maxilla bone Film - Cervical spine
Film - Skull

REQUEST WRITTEN BY _____ ATTENDING PHYSICIAN _____

CLINICAL
HISTORY

Cut wound at the upper lip - abrasion of nasal region.

PREVIOUS X-RAYS ☐ NO ☐ YES - DATE

REPORT:

DATE OF REPORT:

SKULL:

2-27-74

Examination of the skull shows no evidence of fracture of any of
the bones of the vault or base.

NASAL BONES:

Examination of the nasal bones fails to demonstrate any evidence
of fracture.

FACIAL BONES:

Examination of the facial bones reveals a vertical fracture through
the outer aspect of the left zygomatic bone, with no real displacement
of the major parts at the fracture site.

CERVICAL SPINE:

Examination of the cervical spine reveals no fracture or subluxation,
but there is multiple discogenic disease affecting the segments between
C5 and C7, with associated slight osteoarthrotic productive changes
about the margins of these vertebrae.

S. D. Blum, M.D.

S. D. BLUM, M.D.
Roentgenologist

SDB:ez

Phone: 563-1010

New York.

1924

No.

201

N.Y. Polyclinic Hospital Division

From

Te

PATIENT'S
OBLIGATION

Ward _____ for _____ days at \$ _____ per day

Room _____ for _____ days at \$ _____ per day

Room _____ for _____ days at \$ _____ per day

Operating Room Service

Recovery Room

X-Ray Skull, Nasal Bones, Facial Bones, Cervical

Laboratory _____ Spine _____

Drugs

Medical or Surgical Supplies

Telephone

Sundries

Blood Bank

E.K.G. or B.M.R.

Nuclear Medicine

Oxygen

1. Emergency Room Treatment 2/22/54

TOTAL

Blue Cross Rm. & Bd. Allowance

Blue Cross Allowance

Insurance Pm. & Bd. Allowance

Insurance Allowan

TOTAL

BY DEPOSIT OR CASH

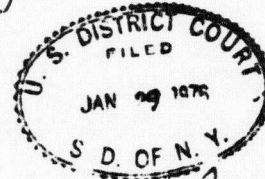
O.P.D.

BALANCE DUE

Make all Checks Payable to French and Polyclinic Medical School and Health Center
Accounts payable weekly in advance and settled in full before patient leaves the Institution.

Charges not reported at time of discharge:

JUDGMENT APPEALED FROM

Lloyd F. MacMahon, J.UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK----- X
CURTIS L. WARD

Plaintiff

-against-

: 74 Civil 4313 (LFH)

THE CITY OF NEW YORK
CONSOLIDATED EDISON OF NEW YORK, INC. :
JAMES MARTIN and
JOCAR CAB CORP.

Defendants :

JUDGMENT

#76,096

CONSOLIDATED EDISON OF NEW YORK, INC.

Defendant and :

Third Party Plaintiff

-against-

COSTELLO CONSTRUCTION CO., INC.
INTERBORO SURFACECO, INC. :

Third Party Defendants

----- X

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Lloyd F. MacMahon, United States District Judge, and a jury, on December 4, 5, 9, 11 and 12, 1975, and the Court having submitted the attached special questions to the jury, and the jury having answered the said questions, and the jury thereafter having returned a verdict in favor of plaintiff as against defendants Martin, Jocar, Con Edison and Costello Construction, and in favor of defendants New York City and Interboro, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff CURTIS L. WARD have judgment against defendants JAMES MARTIN, CON EDISON, COSTELLO CONSTRUCTION CO., and JOCAR CAB CORP., in the amount of \$750., and it is further,

ORDERED: That defendants City of New York and INTERBORO SURFACECO, INC., have judgment against plaintiff CURTIS L. WARD dismissing the complaint.

Dated: New York, N.Y.

January 30, 1976

BEST COPY AVAILABLE

APPROVED:

Lloyd F. MacMahon
U.S.D.J.*Raymond J. Barry*
CLERK

MICROFILM

JAN 30 1976

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED-2/25/76

NOTICE OF APPEAL

-----x
SAME TITLE

74 CIV 4313
(L.F.M.)
-----x

S I R S :

NOTICE IS HEREBY GIVEN that CURTIS L. WARD, plaintiff
above-named, hereby appeals to the United States Court of Appeals
for the second circuit from the final judgment entered in this
action on the 29th day of January, 1976.

DATED: NEW YORK, NEW YORK
February 10, 1976

LEVY & PLATT, ESQS.
Attorneys for Plaintiff

By /s/

TO: Clerk
U.S. District Court
Southern Dist. of New York

A Member of the Firm
380 Lexington Avenue
New York, New York 10017
(212) 687-4155

GERBERBAUM, GARSON & GOLDBAUM,
ESQS.

Attorneys for Defs.
Martin & Jacar Cab Corp.
26 Court Street
Brooklyn, New York 11242

W. BERNARD RICHLAND, ESQ.
Attorney for Def. City of New York
Municipal Building
New York, New York 10007

WILLIAMS & O'NEILL, ESQS.
Attorneys for Def. Consolidated Edison
130 East 15th Street
New York, New York 10003

NOTICE OF APPEAL

MORRIS, DUFFY, IVONE & JENSON
Attorneys for Def. Costello Construction Co.
233 Broadway
New York, New York

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Milton A. Edness Jr., being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 1790C Winton Ave,
Bronx, 10457, N. York

That on the 23 day of April, 1976,
deponent personally served the within Appendix

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copies of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

Williams & O'Neill
Attorneys for Defendant Appella
Consolidated Edison of New York, Inc.
130 East 15 St.
New York, N.Y. 10003

M.A. Edness Jr.

Sworn to before me this

23 day of April, 1976
Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930608
Qualified in Bronx County
Commission Expires March 30, 1978

27

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Kenneth E. Kennedy, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 1171 Steeles Rd
Bklyn N.Y. 11212.

That on the 23 day of April, 1976,
deponent personally served the within appendix

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copies of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

Morris Duffy Ivone + Jensen
Attorney for Defendant Appellee
Costello Construction Company Inc
233 Broadway, New York, N.Y. 10001

Nicholas D. Crofrio
Attorney for Defendant Appellee
Interboro Surface Company
123 William St
New York, N.Y.

Kenneth E. Kennedy

Sworn to before me this

23 day of April, 1976
Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Allan Feldman, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 41-48 40th St
LIC NY

That on the 23 day of April, 1976,
deponent personally served the within Appendix
upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copy of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

Serberman Hanson Goldberg
Attorneys for Defendant Appellees
James Martin & Jocar Cab Corp.
26 Court St. Brooklyn, N.Y. 11201
W. Bernard Richland
Corporation Counsel City of New York
Attorney for Defendant Appellee City of N.Y.
Municipal Bldg.
New York, N.Y. 10007

Allan Feldman

Sworn to before me this

23 day of April, 1976
Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977